

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DAVID D. WHITE,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

NO. C2:14-cv-1379-MJP

ORDER REVERSING  
COMMISSIONER AND  
REMANDING CASE FOR  
AWARD OF BENEFITS

Plaintiff David D. White appeals the final decision of the Commissioner of the Social Security Administration (“Commissioner”) which denied his application for Disability Insurance Benefits (“DIB”) and Supplemental Security Income (“SSI”) under Titles II and XVI of the Social Security Act, 42 U.S.C. §§ 401-33 and 1381-83f, after a hearing before an administrative law judge (“ALJ”). Having reviewed the Parties’ briefing and the administrative record, the Court hereby REVERSES the Commissioner’s decision and REMANDS the matter for an immediate award of benefits.

BASIC DATA

Type of benefits sought:

( X ) Supplemental Security Income – Disability

( X ) Disability Insurance

ORDER REVERSING COMMISSIONER AND  
REMANDING CASE FOR AWARD OF  
BENEFITS - 1

1 Plaintiff:

2 Sex: M

3 Age: 51 at alleged onset date

4 Principal Disabilities Alleged by Plaintiff: peripheral neuropathy, brain atrophy, hypertension,  
cervicalgia

5 Disability Allegedly Began: February 17, 2011

6 Principal Previous Work Experience: Machinist

7 Education Level Achieved by Plaintiff: High school education or higher

8 PROCEDURAL HISTORY

9 Before ALJ:

10 Date of Hearing: March 20, 2013

11 Date of Decision: April 5, 2013

12 Appears in Record at: Decision - AR 15-27; Hearing Transcript - AR 32-57

13 Summary of Decision:

14 1. Claimant meets the insured status requirement through March 31, 2014;

15 2. Claimant has not engaged in substantial gainful activity since February 17, 2011, the  
16 alleged onset date;

17 3. Claimant has the following severe impairments: peripheral neuropathy, brain  
atrophy, hypertension, cervicalgia;

18 4. Claimant does not have an impairment or combination of impairments that meets one  
19 of the listings;

20 5. Claimant has the residual functional capacity to perform light work, except that he  
can perform unskilled, repetitive and routine work;

21 6. Claimant is unable to perform any past relevant work;

22 7. Claimant was born on October 12, 1959 and was 51 years old, defined as closely  
approaching advanced age, on the alleged onset date;

23 8. Claimant has at least a high school education and is able to communicate in English;

24 9. Transferability of job skills is not material because claimant is not disabled;

10. Considering claimant's age, education, work experience, and residual functional  
capacity, there are jobs that exist in significant numbers in the national economy that  
claimant can perform; and

ORDER REVERSING COMMISSIONER AND  
REMANDING CASE FOR AWARD OF  
BENEFITS - 2

1 11. Claimant has not been under a disability from February 17, 2011, through the date  
2 of the decision

### 3 STANDARD OF REVIEW

4 Pursuant to 42 U.S.C. § 405(g), this Court must set aside the Commissioner's denial of  
5 Social Security benefits when the ALJ's findings are based on legal error or not supported by  
6 substantial evidence in the record as a whole. Bayliss v. Barnhart, 427 F.3d 1211, 1214 (9th  
7 Cir. 2005). "Substantial evidence" is more than a scintilla, less than a preponderance, and is  
8 such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.  
9 Richardson v. Perales, 402 U.S. 389, 401 (1971); Magallanes v. Bowen, 881 F.2d 747, 750  
10 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in  
11 medical testimony, and resolving any other ambiguities that might exist. Andrews v. Shalala,  
12 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a  
13 whole, it may neither reweigh the evidence nor substitute its judgment for that of the  
14 Commissioner. Thomas v. Barnhart, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is  
15 susceptible to more than one rational interpretation, it is the Commissioner's conclusion that  
16 must be upheld. Id.

### 17 EVALUATING DISABILITY

18 The claimant bears the burden of proving that he is disabled within the meaning of the  
19 Social Security Act (the "Act"). Meanel v. Apfel, 172 F.3d 1111, 1113 (9th Cir. 1999)  
20 (internal citations omitted). The Act defines disability as the "inability to engage in any  
21 substantial gainful activity" due to a physical or mental impairment which has lasted, or is  
22 expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§  
23 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if his impairments are  
24 of such severity that he is unable to do his previous work, and cannot, considering age,

ORDER REVERSING COMMISSIONER AND  
REMANDING CASE FOR AWARD OF  
BENEFITS - 3

education, and work experience, engage in any other substantial gainful activity existing in the national economy. 42 U.S.C. §§ 423(d)(2)(A); see also Tackett v. Apfel, 180 F.3d 1094, 1098-99 (9th Cir. 1999).

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is disabled within the meaning of the Act. See 20 C.F.R. §§ 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At step five, the burden shifts to the Commissioner. See also Valentine v. Comm’r of Soc. Sec. Admin., 574 F.3d 685, 689 (9th Cir. 2009).

#### ISSUES ON APPEAL

1. Whether the ALJ properly found Plaintiff not credible;
2. Whether the ALJ’s residual functional capacity (“RFC”) is supported by substantial evidence, particularly given new evidence admitted by the AC;
3. Whether the ALJ properly found Plaintiff could perform other work as a cashier and scale operator at step five; and
4. Whether the ALJ’s errors support remand for an immediate award of benefits.

#### DISCUSSION

##### I. Plaintiff’s Credibility

Plaintiff argues the ALJ erred by making an adverse credibility finding based on (1) inconsistent activities of daily living and (2) lack of objective medical evidence. (Dkt. No. 12 at 2.) The ALJ found that Plaintiff’s medically determinable impairments could reasonably be expected to cause the alleged symptoms, but found that the alleged symptoms were inconsistent with the objective medical evidence and with Plaintiff’s activities of daily living. (AR at 22-23.) The ALJ erred.

1 After finding that a Plaintiff's impairments could reasonably be expected to produce the  
2 symptoms alleged, an "ALJ can reject the claimant's testimony about the severity of her  
3 symptoms only by offering specific, clear and convincing reasons for doing so." Garrison v.  
4 Colvin, 759 F.3d 995, 1014-15 (9th Cir. 2014) (internal quotation marks and citations omitted).  
5 "This is not an easy requirement to meet: the clear and convincing standard is the most  
6 demanding required in Social Security cases." Id. at 1015 (internal quotation marks and  
7 citations omitted).

8 Here, the ALJ found that Plaintiff's alleged symptoms were not supported by the  
9 objective medical evidence regarding foot problems. (AR at 23.) The ALJ made this  
10 determination because the results of several examinations and tests were unremarkable,  
11 finding, for example, normal alignment of Plaintiff's feet, no signs of fracture, and normal gait.  
12 (Id.) While the ALJ correctly indicates that these test results were normal, Plaintiff has not  
13 alleged that his foot pain is due to fracture or to the alignment of his feet. While these test  
14 results may be helpful to a doctor attempting to rule out potential causes of Plaintiff's pain,  
15 they are not relevant to Plaintiff's social security disability application. While the ALJ spends  
16 considerable time on these test results, the ALJ neglects to discuss the years of documented  
17 complaints about foot pain, and the relevant findings of abnormalities (AR at 361) and of a  
18 heel plantar and calcaneal spurs, which speak directly to the pain complained of. (AR at 365.)  
19 Defendant argues that the abnormalities were found to be only mild to moderate, and that the  
20 weight of the evidence, as a whole, is inconsistent with Plaintiff's symptom allegations. (Dkt.  
21 No. 15 at 3-4.) But the same records that Defendant cites as showing "only mild to moderate  
22 sensorimotor polyneuropathy" include multiple prescriptions for large amounts of oxycodone  
23 and other intensive pain medication, to be taken every four to six hours. (AR at 358.) The  
24 ALJ's decision to characterize records that include multiple prescriptions for oxycodone and  
ORDER REVERSING COMMISSIONER AND  
REMANDING CASE FOR AWARD OF  
BENEFITS - 5

1 findings of abnormalities on Plaintiff's feet as "inconsistent" with allegations of pain caused by  
2 standing or walking is not supported by clear and convincing reasoning.

3 The ALJ further discounted Plaintiff's credibility because he found Plaintiff's activities  
4 of daily living to be inconsistent with the symptoms alleged. (AR at 23-24.) The Ninth Circuit  
5 has "repeatedly warned that ALJs must be especially cautious in concluding that daily  
6 activities are inconsistent with testimony about pain, because impairments that would  
7 unquestionably preclude work and all the pressures of a workplace environment will often be  
8 consistent with doing more than merely resting in bed all day." Garrison, 759 F.3d at 1016.  
9 "[M]any home activities are not easily transferable to what may be the more grueling  
10 environment of the workplace, where it might be impossible to periodically rest or take  
11 medication. Recognizing that disability claimants should not be penalized for attempting to  
12 lead normal lives in the face of their limitations, we have held that [o]nly if [her] level of  
13 activity were inconsistent with [a claimant's] claimed limitations would these activities have  
14 any bearing on [her] credibility." Id. (internal quotation marks and citations omitted).

15 Here, the ALJ discounted Plaintiff's credibility because Plaintiff's symptom allegations  
16 were inconsistent with Plaintiff's testimony regarding being active around his property,  
17 exercising, driving a car with manual transmission, caring for fowl, and helping to care for his  
18 landlord in exchange for rent-free accommodation. (AR at 23-24.) In making these findings,  
19 the ALJ mischaracterizes the record.

20 The ALJ found that Plaintiff is active around his property and "said he does not spend a  
21 lot of time sitting down relaxing." (AR 23-24.) At the ALJ hearing, Plaintiff was asked, on  
22 average, how much time he spends on his feet, and testified that he is active for thirty to forty-  
23 five minutes a day around his property. (AR 53.) He testified that he does not enjoy sitting  
24 around the house and would prefer to be outside, but that foot pain forces him to sit and relax,

1 even when he would prefer to be outside. (AR 42-43.) As part of his activity around the  
2 property, Plaintiff walks fifty feet from the house and gives food and water to chickens and  
3 other fowl, twice a day. (AR at 52.) The entire process—walking to the coop, getting food  
4 and water, giving it to the chickens, and walking back to the house—takes between five and  
5 ten minutes. (AR at 52.) Once, Plaintiff enlarged the fence around the chicken coop, working  
6 on the project for around one hour per day over the course of a week. (AR at 54.) The  
7 increase in physical activity over that week increased his physical pain, and his pain  
8 medication dosage was increased as a result. (AR at 54-55.) The ALJ's determination that  
9 Plaintiff's thirty to forty-five minutes of daily activity, which includes walking fifty feet to  
10 feed chickens and once included enlarging a fence, is "inconsistent" with alleged pain and  
11 supports a finding that Plaintiff can perform light work, full time, in a competitive work  
12 environment, is not supported by clear and convincing reasoning.

13 The ALJ also mischaracterizes Plaintiff's interactions with his landlord by overstating  
14 the amount of care Plaintiff provides her and neglecting to mention that she has a caretaker  
15 who is primarily responsible for all of the care the ALJ states Plaintiff provides. Plaintiff  
16 testified that in exchange for living in her home without paying rent, Plaintiff keeps an eye out  
17 for his elderly landlord and helps out around the house, occasionally taking her to a doctor's  
18 appointment or preparing a meal. (AR at 48-50.) But, Plaintiff's landlord has a caretaker who  
19 provides these services and more—Plaintiff lends an additional hand when the caretaker is  
20 unavailable. The ALJ's decision to exaggerate the services Plaintiff provides while failing to  
21 note that another person is primarily responsible for the tasks discussed is not supported by  
22 clear and convincing reasoning.

23 The ALJ's failure to recognize the difference between thirty to forty-five minutes of  
24 daily physical activity and the ability to complete a one-off fence project by working for one  
ORDER REVERSING COMMISSIONER AND  
REMANDING CASE FOR AWARD OF  
BENEFITS - 7

1 hour a day over the course of a week, and the demands of eight hours of light work every day  
2 in a competitive work environment, is cause for concern. As the Ninth and Seventh Circuits  
3 have noted, “[t]he failure to recognize these differences is a recurrent, and deplorable, feature  
4 of opinions by administrative law judges in social security disability cases.” Garrison, 759  
5 F.3d at 1015 (quoting Bjornson v. Astrue, 671 F.3d 640, 647 (7th Cir. 2012).)

## 6 II. Medical Evidence

7 Plaintiff argues that the ALJ erred by discounting the opinions of treating physicians,  
8 and contends that the ALJ’s decision is not supported by substantial evidence, especially in  
9 light of new evidence received and admitted by the Appeals Council. (Dkt. No. 12 at 9.)  
10 Defendant argues that the ALJ’s evaluation of the medical evidence is supported by substantial  
11 evidence and free from harmful legal error. (Dkt. No. 15 at 5.)

12 The ALJ is responsible for resolving conflicting or ambiguous medical evidence.  
13 Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998). The ALJ may reject the testimony of a  
14 medically acceptable treating source by providing specific legitimate reasons based on  
15 substantial evidence in the record. Molina v. Astrue, 674 F.3d 1104, 1111 (9th Cir. 2012).  
16 More weight is given to a treating physician’s opinion than to that of a non-treating physician  
17 because a treating physician “is employed to cure and has a greater opportunity to know and  
18 observe the patient as an individual.” Magallanes, 881 F.2d at 751 (citation omitted). If an  
19 ALJ rejects the opinion of a treating or examining physician, the ALJ must give clear and  
20 convincing reasons for doing so if the opinion is not contradicted by other evidence, and  
21 specific and legitimate reasons if it is. Reddick, 157 F.3d at 725. Where an ALJ rejects a  
22 medical opinion only by “criticizing it with boilerplate language that fails to offer a substantive  
23 basis for his conclusion,” he errs. Garrison, 759 F.3d at 1013.



1 The ALJ considered four medical opinions—two by treating physicians, one by a  
2 certified physician’s assistant, and one by a medical consultant who performed a record  
3 review. (AR at 24-25.) All four medical professionals opine that Plaintiff is limited in some  
4 capacity. (Id.) The limitations described in all four opinions were given “little weight” by the  
5 ALJ.<sup>1</sup> (Id.) The ALJ gave identical reasons for rejecting the opinions of each of the sources:  
6 the medical opinion is inconsistent with that source’s treatment notes, the opinion is  
7 inconsistent with the overall evidence, and the opinion is inconsistent with the claimant’s  
8 activities of daily living. (Id.)

9 As discussed above, the ALJ incorrectly found that Plaintiff’s activities of daily living  
10 and the objective medical evidence as a whole did not support Plaintiff’s alleged symptoms.  
11 For similar reasons, “inconsistency with the overall evidence” and inconsistency with the  
12 ALJ’s characterization of Plaintiff’s activities of daily living are not legitimate reasons for  
13 rejecting all of the medical opinions. The ALJ’s boilerplate critique that the opinions are  
14 inconsistent with treatment notes is equally illegitimate. The ALJ rejected the opinion of  
15 treating physician Dr. Balkany, for example, because his opinion that Plaintiff was limited by  
16 his impairments was inconsistent with his treatment notes, which include findings that  
17 Plaintiff’s “gait was consistently intact.” (AR at 25.) A review of Dr. Balkany’s treatment  
18 notes, however, clearly shows that Dr. Balkany noted abnormalities, was concerned about  
19 Plaintiff’s symptoms, and was prescribing large amounts of intensive pain medication, among  
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21  
22 <sup>1</sup> The only opinion to be given “some weight” as opposed to “little weight” was the opinion of  
23 Dr. Rubio, a non-treating, non-examining state agency physician who performed a record review. (AR  
24 at 24.) Dr. Rubio opined that Plaintiff could perform light work with postural and environmental  
limitations. (Id.) The ALJ credited the determination that Plaintiff could perform light work, but did  
not credit the postural or environmental limitations because those limitations were unsupported by the  
“objective evidence.” (Id.)

1 other things, in an attempt to treat Plaintiff's symptoms. (AR at 393-409, 454-84.) Dr.  
2 Balkany's treatment notes are not inconsistent with his limitations opinion.

3 The Court finds that the ALJ's rejection of the limitations included in all medical  
4 opinions, justified only by identical boilerplate critiques, is not supported by specific and  
5 legitimate reasoning and is not supported by substantial evidence in the record. Because an  
6 ALJ is not free to disregard all evidence that is inconsistent with a finding of 'not disabled'  
7 without providing specific and legitimate reasons based on substantial evidence for doing so,  
8 the ALJ here erred.

### 9 III. Remand for an Award of Benefits

10 The ALJ erred by discounting Plaintiff's credibility and by discrediting the limitations  
11 found in the opinions of every medical expert in the record. The ALJ's errors are serious and  
12 necessitate remand, and thus the Court does not reach Plaintiff's arguments at step five. The  
13 Court now turns to the question of whether remand should be for further proceedings or for an  
14 immediate award of benefits.

15 The Social Security Act provides that courts may affirm, modify, or reverse a decision  
16 by the Commissioner with or without remanding the cause for a rehearing. 42 U.S.C. § 405(g);  
17 Garrison, 759 F.3d at 1019. Where there are no outstanding issues to resolve and remand for  
18 further proceedings would unnecessarily delay the receipt of benefits, courts may remand for  
19 an immediate award of benefits. Garrison, 759 F.3d at 1019-20.

20 Whether remand for an immediate award of benefits is appropriate is determined  
21 through the credit-as-true test, crediting as true the medical opinions and claimant testimony  
22 that were rejected by the ALJ for legally insufficient reasons. Id. at 1019-21. Each prong of  
23 the test must be satisfied in order for a court to remand for the award of benefits: "(1) the  
24 record has been fully developed and further administrative proceedings would serve no useful

1 purpose; (2) the ALJ has failed to provide legally sufficient reasons for rejecting evidence,  
2 whether claimant testimony or medical opinion; and (3) if the improperly discredited evidence  
3 were credited as true, the ALJ would be required to find the claimant disabled on remand.” Id.  
4 at 1020. Where the three prongs of the credit-as-true test are met, it constitutes an abuse of  
5 discretion for a district court to remand for further proceedings, unless the court’s review of the  
6 record as a whole “creates serious doubt as to whether the claimant is, in fact, disabled within  
7 the meaning of the Social Security Act.” Id. at 1020-21.

8 The record here is fully developed, and further proceedings would serve no useful  
9 purpose. Treating physicians throughout the record limit Plaintiff to no more than sedentary  
10 work, and find that pain and medication interfere with Plaintiff’s attention and concentration  
11 on a frequent to constant basis. (AR at 289-92, 293-98, 486-89, 500-04.) Second, as discussed  
12 above, the ALJ did not provide legally sufficient reasoning for rejecting the limitations  
13 described by all of the medical experts or for rejecting Plaintiff’s testimony. Finally, crediting  
14 as true the improperly rejected testimony and medical evidence, Plaintiff is a person closely  
15 approaching advanced age who is limited to sedentary work and to unskilled work, and thus is  
16 disabled under the appropriate grid rule. See 20 C.F.R., Part 404, Subpart P, Appendix 2.  
17 Because a review of the record as a whole creates no “serious doubt” that Plaintiff is disabled,  
18 the Court must remand for an immediate award of benefits.

### 19 CONCLUSION

20 The Court, having found that the ALJ improperly discredited Plaintiff’s testimony and  
21 the limitations described in every medical opinion in the record, REVERSES the  
22 Commissioner’s final decision. Finding that Plaintiff’s case satisfies the credit-as-true test for  
23 the immediate award of benefits, and finding nothing in the record that creates serious doubt as  
24

1 to Plaintiff's disability, the Court REMANDS the case to the Commissioner for an immediate  
2 award of benefits.

3  
4 The clerk is ordered to provide copies of this order to all counsel.

5 Dated this 18th day of February, 2015.

6  
7 

8 Marsha J. Pechman  
Chief United States District Judge